WA 99/2003
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE B.D. AGARWAL

WRIT APPEAL NO. 99 OF 2003

1. Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Director General Assam Rifles,
Shillong - 11.

3. The Commandant,
5 Assam Rifles,
C/o 99 APO.

& & & APPELLANTS

-Versus-

Sri Prem Bahadur Chetri,
Son of Late Prajapati Chetri,
Village - Sonaipam, P.O. Lokra,
District - Sonitpur, Assam.

& & &RESPONDENT

P R E S E N T
HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTG.)
THE HON'BLE MR. JUSTICE B.D. AGARWAL

For the Appellants : Mr. D. Baruah,
Central Govt. Counsel.

For the respondent : Mr. S.C. Biswas,
Advocate.

Date of hearing : 8.2.2007

Date of Judgment and Order : 8.2.2007

JUDGMENT AND ORDER

(ORAL)

This appeal is directed against the Judgment dated 17.7.2002 pas sed in Civil Rule No.6072/1997. The private respondent as writ petitioner filed the aforesaid Civil Rule praying for appropriate directions for payment of pensi on/disability pension on discharge from service on the ground of invalidity. It may be mentioned here that the respondent was enrolled as Rifleman on general du ty in the Assam Rifles in the year 1964. He was discharged from service after 14

years of service as claimed by the respondent. His prayer for payment of disability pension was rejected by the concerned authority on the ground that there was delay in preferring the claim for disability pension and that the percentage of disability is less than 60%.

2. The learned Single Judge allowed the writ petition directing the appellant authority to provide necessary disability pension along with arrears on the ground that the respondent would be deemed to be a soldier under the provisions of Indian Army Act being on combatant duty. The learned Single Judge was of the view that the percentage of disability for grant of disability pension will be 20% in the instant case and not 60% as pointed out by the concerned authority.

3. We have heard Mr. D. Baruah, learned Central Government Counsel for the Union and also Mr. S.C. Biswas, learned counsel for the private respondent.

4. There is no dispute with regard to the enrollment of the private respondent as rifleman on general duty. There is also no dispute that he was discharged from service on 3rd October, 1978 i.e. after 14 years 3 months 17 days from the date of his appointment. With regard to computation of total qualifying service, Mr. Baruah pointed out that the respondent was absent from duty without authority for a period of 4 years 9 months 23 days and, less this period, the total qualifying service rendered by him is only 9 years 5 months 25 days, which is less than the qualifying service prescribed under the Rules for grant of disability pension.

5. Mr. Baruah, learned counsel for the appellant further pointed out that the respondent was rifleman on general duty and the provisions of the Army Act would apply to him only when he or his Unit is attached to or acting with the regular Army. Only in that case, Mr. Baruah elaborates, the provisions of the Army Act and the Rules, in so far the disciplinary matters are concerned, would be applicable.

6. We have considered the submissions advanced by Shri Baruah. The submission advanced that the Army Unit to which the respondent was attached was not connected with the regular Army during the relevant period is based on the averments made in the affidavit submitted by the Union. The private respondent did not file counter to controvert the above submission. It is, therefore, clear that the provisions of the Army Act will not be applicable in the case of the private respondent for the purpose of grant of disability pension. Therefore, his case will have to be considered for grant of pension within the provisions of the C.C.S. (Pensions) Rules. Rule 9(3) of Appendix-3 of C.C.S. Rules provides for disability pension if the percentage of permanent disability is not less than 60% and the incumbent has rendered 10 years of service. This is in addition to the normal invalid pension provided under the C.C.S. (Pensions) Rules, 1972, provided the claim is made within a period of five years.

7. In the instant case, as pointed out above, the petitioner has not rendered 10 years of actual service as he was absent without authority from duty for more than 4 years 9 months. The disability is also not upto the extent of 60%. No claim was also laid within five years. Therefore, under the C.C.S. (Pension) Rules, he is not entitled to disability pension.

8. Mr. S.C. Biswas, learned counsel for the respondent pointed out that the respondent suffered disability in an Army operation and, therefore, his case may be considered with compassion, at-least, the normal invalid pension may be granted to him.

9. We are not oblivious to the difficult nature of the duties and t

he hazard required to be faced by riflemen of the Assam Rifles. We are also conscious of the fact that the respondent had sustained disability during the course of an Army operation. For this reason, we are inclined to direct consideration of the respondent's case for payment of normal invalid pension.

10. We, therefore, dispose of this appeal in modification of the judgment to the extent indicated hereinbelow :-

(i) The authority shall condone the delay in laying down the claim within five years;
(ii) The period of absence of 4 years 9 months 23 days shall be treated as on duty without pay for the purpose of pension only;
(iii) After completing the above exercise, the authority shall pass appropriate orders for payment of normal invalid pension.

It is desired that the concerned authority shall comply with the order as expeditiously as possible.